

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE: Lucjan Szostko

Debtor(s),

Chapter 13

Case No. 15-33825

Judge Timothy A. Barnes

RESPONSE TO DEBTOR'S MOTION FOR RELIEF FROM IN REM ORDER

NOW COMES, PNC BANK, NATIONAL ASSOCIATION by and through its attorney, MRPierce, LLC, d/b/a McCalla Raymer Pierce, LLC and in response to Debtor's Motion for Relief from the *In Rem* Order, states as follows:

1. The above captioned Chapter 13 was filed at 10:27 a.m. on October 5, 2015 just minutes before the 10:30 a.m. foreclosure sale.
2. PNC Bank, National Association services the mortgage lien on the property located at 8614 S. Parkside Avenue, Burbank IL 60459.
3. PNC Bank, National Association sold the property at the October 5, 2015 foreclosure sale without knowledge of the bankruptcy filing.
4. In addition to filing the instant case mere minutes before the sale, Debtor's October 19, 2015 plan was not filed in good faith as it proposed to cram down the principal residence, which is a single family home, in violation of 11 U.S.C §1322(b)(2).
5. Consequently, PNC Bank, National Association filed a Motion to Annul the Automatic Stay, which was granted on December 3, 2015.
6. Debtor filed a motion to Vacate the Order Annulling the Stay on December 15, 2015.

7. Debtor's Motion was resolved with an Agreed Order entered on January 7, 2016 in which the parties agreed to vacate the Order Annulling the Stay with *In Rem* relief if the case was dismissed or if the stay was modified.
8. The case was dismissed on June 30, 2016 for failure to make plan payments. Per the Trustee's website the default was \$11,186.65.
9. Upon dismissal, the *In Rem* Order was recorded with the Cook County Recorder of Deeds on July 11, 2016 as document number 1619322023.
10. Pursuant to the recorded *In Rem* Order, if any party files for bankruptcy relief, PNC Bank, National Association shall not be stayed from its foreclosure of the property located at 8614 S. Parkside Avenue, Burbank IL 60459, for a period of two years from entry of that Order.
11. The foreclosure sale was reset for August 19, 2016.
12. Debtor filed bankruptcy case 16-26635 on the day of sale again despite having ample notice of the sale date.
13. However, due to the recorded *In Rem* Order, an Automatic Stay was not imposed as to PNC Bank, National Association with the filing of the 16-26635 case, regarding the subject property so the property was sold on August 19, 2016.
14. An Order Confirming Absence of Stay was entered on September 7, 2016 in case 16-26635.
15. An Order granting Debtor's Motion to Extend the Automatic Stay was entered on September 14, 2016 in 16-26635, which clarified that PNC Bank, National Association was excluded since a Stay cannot be extended where it was never imposed as is the case with PNC Bank, National Association (docket #25).

16. Debtor filed a Motion to Vacate the Order Confirming Absence of Stay and a Motion to Vacate the Order Extending the Automatic Stay in the 16-26635 case in an attempt to Stay PNC Bank, National Association.
17. However, the underlying *In Rem* Order still stands thereby permitting PNC Bank, National Association to move forward with foreclosure and eviction regardless of those Orders.
18. Debtor ultimately withdrew both Motions to Vacate that were filed in the 16-26635 case.
19. Debtor finally filed the instant Motion on September 22, 2016 seeking relief from the *In Rem* Order entered in the 15-33825 case.
20. Debtor's Motion to Vacate the *In Rem* Order is unfounded as it does not allege any mistake of law or fact that would warrant vacating the Order.
21. In fact, there is no mistake to allege as the *In Rem* Order was entered by **agreement** with the same counsel that is currently representing the debtor.
22. Moreover, the *In Rem* Order was entered on January 7, 2016, engendering debtor with over nine (9) months to seek relief yet he failed to move for relief until one month after the property was sold.
23. Additionally, debtor chose to waste judicial resources by filing frivolous motions to vacate immaterial orders in bankruptcy case 16-26635 instead of addressing the *In Rem* Order in this case in a timely manner.
24. Furthermore, debtor's Motion fails to state the grounds upon which relief is sought and merely cites Rule 60(b) in general without citing a specific provision.
25. In the event that debtor is seeking relief under the catch-all provision of Rule 60(b)(6), his Motion must also be denied for failure to demonstrate "extraordinary circumstances."

The Court in *In re Duffy* found that “to prevail under Rule 60(b)(6), the movant must demonstrate that “extraordinary circumstances” exist that justify relief. *In re Duffy*, 452 B.R. 13, 21 (Bankr. N.D.N.Y. 2011).

26. Finally, debtor improperly seeks relief in this case, 15-33825, without first moving to reopen this dismissed and terminated case.

WHEREFORE, PNC Bank, National Association respectfully prays that this Honorable Court enter an Order denying Debtor’s Motion for Relief From Order (docket # 57) be denied and leave be granted to PNC Bank, National Association to proceed with foreclosure and eviction of the property located at 8614 S. Parkside Avenue, Burbank IL 60459, and for such other and further relief as this Honorable Court deems just.

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CERTIFICATE OF SERVICE

TO: SEE ATTACHED ADDRESSES

CERTIFICATION

I, the undersigned Attorney, Certify that I served a copy of the attached Response to the Addresses attached by depositing the same at the U.S. Mail at 1 North Dearborn, Chicago, Illinois 60602 at 5:00 P.M. on October 19, 2016, with proper postage prepaid.

MRPierce, LLC, d/b/a McCalla
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/s/ Kinnera Bhoopal
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**Pierce & Associates, P.C. and McCalla Raymer, LLC combined Firms to form the Firm
McCalla Raymer Pierce, LLC.**

**This is an attempt to collect a debt and any information obtained will be used for that
purpose.**

SERVICE LIST

To Trustee:

Marilyn O. Marshall
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by Electronic Notice through ECF

To Debtor:

Lucjan Szostko
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by U.S. Mail

To Attorney:

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